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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES KELCY PEGLER SR., an individual, and KELCY CHARLES PEGLER JR., an individual, Plaintiffs, v. NRG RESIDENTIAL SOLAR SOLUTIONS, LLC (d/b/a NRG Home Solar), a Delaware limited liability company, and NRG ENERGY, INC., a Delaware corporation, Defendants.	Case No. 17-CV- **COMPLAINT**

Plaintiffs Charles Kelcy Pegler Sr. ("Pegler Sr.") and Kelcy Charles Pegler Jr. ("Pegler Jr.") for their complaint against NRG Residential Solar Solutions, LLC ("NRG Solar") and NRG Energy, Inc. ("NRG Energy") hereby allege as follows:

NATURE OF THE ACTION

1. This action arises from (i) the default by defendant NRG Solar of its obligation to make a $5 million purchase price payment, in breach of the express terms and conditions of NRG Solar's agreement with plaintiffs, and (ii) the failure of defendant NRG Energy, the publicly-traded parent company of defendant NRG Solar, to honor its obligations as guarantor of that $5 million payment.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because this action involves citizens of different States and the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs.

3. Each defendant has expressly consented to the personal jurisdiction of this Court pursuant to the agreement and guarantee underlying this action.

4. Venue is proper in this Court because (i) a substantial part of the events or omissions giving rise to the claims occurred in this district, and (ii) the parties expressly agreed to the laying of venue in this Court and waived objections based on venue or forum *non conveniens*.

5. Pursuant to the agreements at issue, New York law applies without giving effect to conflicts of laws principles.

THE PARTIES

6. Plaintiff Charles Kelcy Pegler ("Pegler Sr.") is a citizen of Florida.

7. Plaintiff Kelcy Charles Pegler ("Pegler Jr.") is a citizen of Florida.

8. Defendant NRG Residential Solar Solutions LLC ("NRG Solar") is a limited liability company organized under the laws of the state of Delaware, with its principal place of business in Texas.

9. Upon information and belief, NRG Energy, Inc. ("NRG Energy") is the sole member of NRG Solar.

10. Defendant NRG Energy is a corporation organized under the laws of the state of Delaware, with its principal place of business in New Jersey.

ALLEGATIONS COMMON TO ALL COUNTS

The Peglers Establish and Build Roof Diagnostics Solar

11. In or about 2011, plaintiffs (collectively, the "Peglers") formed Roof Diagnostics Solar Holdings LLC ("RDS"), which focused on the sale and installation of solar energy panels to homeowners for residential use.

12. Pegler Sr. was the President of RDS.

13. Pegler Jr. was the Chief Executive Officer of RDS.

14. RDS grew rapidly. By the third year of its operations, RDS was generating more than $50 million in annual revenues and employed approximately 475 people.

15. RDS's business included customers in New York, New Jersey, Massachusetts, and Connecticut.

The Peglers Sell RDS to Defendant NRG Solar

16. Commencing in 2013, RDS provided sales and installation services for customers in NRG Solar's solar program.

17. As a consequence of working with RDS, NRG Solar became familiar with the business and operations of RDS.

18. After numerous conversations and negotiations, on or about December 18, 2013, NRG Solar formally submitted a bid to purchase all of the membership interests in RDS for $63 million. NRG Solar indicated that it wanted to combine the sales and installation of solar panels with the financing component of the residential solar energy business.

19. As one of the terms of its bid, NRG Solar requested that both Pegler Sr. and Pegler Jr. stay on the senior management team following the acquisition of RDS.

20. Negotiations relating to the sale of RDS to NRG Solar were ongoing when, on December 19, 2013, Pegler Sr. was charged in a New Jersey State grand jury indictment (the "New Jersey Indictment") alleging that he had provided misinformation to the workers'

compensation carrier of another company, Roof Diagnostics Inc., a roofing company wholly and separately owned by Pegler Sr.

21. Defendant NRG Energy – as a publicly traded company and the parent of NRG Solar – expressed concern that if NRG Solar acquired RDS, the reputation of NRG Energy in the public marketplace would be negatively impacted due to Pegler Sr.'s connection and continued involvement with RDS.

22. Defendants stated that they were still prepared to acquire RDS if Pegler Sr. did not join NRG Solar after the acquisition, and if the Peglers agreed to condition a portion of the purchase price upon, among other things, (i) a final resolution of the New Jersey Indictment, and (ii) NRG Energy not suffering reputational harm by (x) an expansion of the allegations underlying the New Jersey Indictment to other members of RDS's senior management, or (y) Pegler Jr.'s termination for cause.

23. With respect to defendants' concern regarding Pegler Sr., the Peglers agreed with NRG Solar's proposal that Pegler Sr. would not be an employee of NRG Solar following the acquisition.

24. With respect to defendants' concern regarding a possible expansion of the allegations underlying the New Jersey Indictment, the Peglers agreed with NRG Solar's proposal that the post-closing installment payments of the purchase price for RDS, including the final $5 million payment, would be contingent on the "Definitive Resolution of the New Jersey Indictment," as defined in their purchase agreement.

25. With respect to defendants' concern that Pegler Jr. might be subject to allegations of misconduct, the Peglers agreed with NRG Solar's proposal to structure the payment of the purchase price so that, in relevant part, the final $5 million payment was expressly contingent upon Pegler Jr. not having been (i) terminated by NRG Solar for cause or (ii) otherwise subject to disciplinary actions or proceedings on the due date of the final $5 million payment. If both these contingencies were met, then in accordance with the purchase agreement provision proposed and drafted by NRG Solar, Pegler Jr. would be deemed a "Good Standing Employee."

The Purchase Agreement Is Executed

26. On March 25, 2014, the Peglers and defendant NGR Solar entered into a "Purchase and Sale Agreement" by which NRG Solar agreed to purchase all of the membership interests of RDS for the price of $63 million. A true and correct copy of the Purchase and Sale Agreement, without its schedules or exhibits, is attached to the Complaint as Exhibit A.

27. The purchase price was to be paid by defendant NRG Solar in four installments: a payment on the closing date of $25.5 million; a "First Post-Closing Payment" 18 months later of $22.5 million; a "Second Post-Closing Payment" of $10 million three years after the closing date; and the "Final Post-Closing Payment" of $5 million, also due three years after the closing date.

28. Defendant NRG Solar made the payment on the Closing Date, and made the First Post-Closing Payment and the Second Post-Closing Payment in a timely fashion.

29. Defendant NRG Solar did not make the Final Post-Closing Payment of $5 million.

30. NRG Solar was obligated to make the Final Post-Closing Payment because (i) there had been a Definitive Resolution of the New Jersey Indictment, and (ii) Pegler Jr. was a Good Standing Employee in that he had not been terminated for cause and was not subject to disciplinary actions or proceedings of any kind on the date that the Final Post-Closing Payment was due.

Defendant NRG Energy's Guarantee

31. Pursuant to paragraph 8.07 of the Purchase and Sale Agreement, the Purchaser Parent (defined as NRG Energy) was required to execute and deliver to plaintiffs a "Purchaser Parent Guarantee."

32. The Guaranty was entered into by defendant NRG Energy as the "Guarantor," defendant NRG Solar as the "Obligor," and the Peglers as the "Beneficiary." A true and correct copy of the Guaranty is attached to the Complaint as Exhibit B.

33. Pursuant to the Guaranty, NRG Energy unconditionally guaranteed to the Peglers "the full and timely performance when due" and "the payment of all amounts when due and owing" by NRG Solar under the Purchase and Sale Agreement. (Ex. B, Guaranty ¶ 1).

34. The Guaranty applied to all obligations under the Purchase and Sale Agreement regardless of when such obligations arose. (Ex. B, Guaranty ¶ 1).

35. NRG Energy agreed that if "at any time Obligor [NRG Solar] defaults in the payment or performance when due of any of its Obligations, Guarantor [NRG Energy] shall, promptly, upon written notice by Beneficiary [the Peglers] . . . pay or perform, or cause the payment or performance of, such Obligations." (Ex. B, Guaranty ¶ 2).

36. NRG Energy also agreed that it would "pay all costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by Beneficiary [the Peglers] in enforcing this Guaranty, whether by suit or otherwise, but only to the extent payment or performance under this Guaranty is otherwise due and Beneficiary is the prevailing party in its claim against Guarantor." (Ex. B, Guaranty ¶ 5).

37. Despite due demand following NRG Solar's default, NRG has not paid the Peglers the Final Post-Closing Payment of $5 million.

Pegler Jr. Was Not Terminated For Cause

38. After RDS was purchased by NRG Solar, RDS's sales and installation capabilities were merged with NRG Solar's financing capabilities.

39. Following the purchase, defendant NRG Solar employed Pegler, Jr. as its President.

40. Pegler Jr. directly reported to executives of NRG Solar's parent corporation, defendant NRG Energy, and participated in meetings of the board of directors of NRG Energy.

41. In 2015, NRG Energy attempted to sell NRG Solar to a third party, but those efforts were unsuccessful.

42. Beginning in March 2016, NRG Energy began downsizing NRG Solar.

43. Beginning in March 2016, NRG Solar terminated hundreds of its employees.

44. In or about March 2016, Pegler Jr. was given a diminished role at NRG Solar, focusing only on sales in the residential solar panel industry.

45. In or about March 2016, and in connection with the downsizing of NRG Solar and the reduction in Pegler Jr.'s responsibilities, Pegler Jr. and NRG Energy's Chief Executive Officer, Mauricio Gutierrez, commenced discussions regarding Pegler Jr.'s role with NRG Solar.

46. Mr. Gutierrez and Pegler Jr. mutually agreed that Pegler Jr. would resign from NRG Solar. Pegler Jr. did so on April 8, 2016.

47. Pegler Jr. was not terminated for cause.

The Peglers Are Entitled to the Final Post-Closing Payment

48. Pursuant to the Purchase and Sale Agreement, the "Outside Payment Date" for the payment of the Final Post-Closing Payment of $5 million was March 25, 2017.

49. The Purchase and Sale Agreement requires NRG Solar to make the Final Post-Closing Payment if "on the Outside Payment Date (i) Pegler Jr. remains a Good Standing Employee of Purchaser and (ii) the Post-Closing Payment Condition has been satisfied." (Ex. A, Purchase and Sale Agreement ¶ 2.02(d)).

50. Paragraph 1.01 of the Purchase and Sale Agreement states that "Good Standing Employee means that Pegler Jr. (i) has not been terminated for cause and (ii) is not otherwise subject to disciplinary actions or proceedings."

51. On the Outside Payment Date, Pegler Jr. had not been terminated for cause.

52. On the Outside Payment Date, Pegler Jr. was not otherwise subject to disciplinary actions or proceedings.

53. Therefore, under the Purchase and Sale Agreement, on the Outside Payment Date, Pegler Jr. remained a Good Standing Employee.

54. Paragraph 1.01 of the Purchase and Sale Agreement defines the "Post-Closing Payment Condition" to mean the "Definitive Resolution of the New Jersey Indictment," which is, in turn, also defined in paragraph 1.01 of the Purchase and Sale Agreement.

55. As of March 25, 2017, the Post-Closing Payment Condition had been satisfied.

56. NRG Solar was obligated to make the Final Post-Closing Payment of $5 million by no later than March 25, 2017. NRG Solar did not do so.

NRG Energy Fails to Honor Its Guaranty

57. On April 28, 2017, plaintiffs, by their counsel, wrote to NRG Energy in accordance with the Guaranty (the "April 28 Letter").

58. The April 28 Letter provided notice that NRG Solar was in default of its obligation to make the $5 million Final Post-Closing Payment.

59. The April 28 Letter demanded payment and explained that, pursuant to the Guaranty, NRG Energy had the obligation to pay the Final Post-Closing Payment "within thirty (30) days after written demand therefor." (*See* Ex. B, Guaranty ¶ 4).

60. Despite plaintiffs' demands, neither NRG Solar nor NRG Energy has made the $5 million Final Post-Closing Payment.

FIRST CAUSE OF ACTION

(Breach of Contract Against NRG Solar)

61. Plaintiffs repeat and re-allege paragraphs 1 through 60 as if fully set forth herein.

62. The Purchase and Sale Agreement is a valid and binding agreement.

63. Pursuant to the Purchase and Sale Agreement, NRG Solar had an obligation to make the $5 million Final Post-Closing Payment on March 25, 2017.

64. Despite plaintiffs' demands for payment, NRG Solar has refused to pay the $5 million Final Post-Closing Payment.

65. NRG Solar has defaulted and breached the Purchase and Sale Agreement.

66. As a direct, foreseeable and proximate cause of NRG Solar's breaches, plaintiffs have been damaged.

SECOND CAUSE OF ACTION

(Breach of Contract Against NRG Energy)

67. Plaintiffs repeat and re-allege paragraphs 1 through 66 as if fully set forth herein.

68. The Guaranty is a valid and binding agreement.

69. Pursuant to the Guaranty, upon NRG Solar's default in payment, NRG Energy became obligated to pay the $5 million Final Post-Closing Payment in accordance with the Peglers' instructions within thirty days of receipt of a written demand.

70. Pursuant to the Guaranty, NRG Solar must also pay plaintiffs' reasonable attorneys' fees and expenses, as the prevailing parties in commencing and pursuing this action to enforce the Guaranty.

71. More than thirty days has passed since plaintiffs' written demand for payment on the Guaranty was received by NRG Energy.

72. NRG Energy has not paid the $5 million Final Post-Closing Payment.

73. As a direct, foreseeable and proximate cause of NRG Energy's breach, plaintiffs have been damaged.

DEMAND FOR RELIEF

WHEREFORE, plaintiffs Charles Kelcy Pegler Sr. and Kelcy Charles Pegler Jr. demand a judgment as follows:

(1) Against defendants NRG Residential Solar Solutions LLC and NRG Energy, Inc., jointly and severally, (a) awarding damages in a sum to be determined at trial of at least $5,000,000; (b) prejudgment and post-judgment interest; and (c) such other, further or different relief as the Court deems just or equitable; and

(2) Against defendant NRG Energy, Inc. awarding all costs, expenses, and fees, including but not limited to plaintiffs' reasonable attorneys' fees, with prejudgment and post-judgment interest.

Dated: New York, New York
June 8, 2017

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